

# Annexation

## Description

Annexation is the legal process of incorporating a geographical area into an established municipality. In Indiana, law allows for any land to be annexed by a municipality without public consent so long as the annexation process is followed and it meets the required conditions. This is referred to as “municipal determination.”

There are three ways in which municipalities can annex land into their corporate boundaries in Indiana: involuntary annexation, voluntary annexation, and super-voluntary annexation. Each of these annexation types is outlined below:

### Involuntary Annexation

Involuntary annexation is initiated by the municipality and, by its name, is not with the consent (at least in the beginning) of the owners of the property to be annexed. In the case of involuntary annexation, the municipality must adopt a fiscal plan prior to providing notice of the annexation to affected property owners. Notice must be published and sent by certified mail to each property owner shown on the Auditor’s current tax list at least 60 days prior to a public hearing. The City or Town Council must hold a public hearing on the proposed annexation no earlier than 60 days after the annexation ordinance is introduced. The annexation ordinance may be adopted no earlier than 30 days nor more than 60 days following the public hearing. Publication of the adopted ordinance begins a 90 day period during which property owners may file a remonstrance. If no remonstrance (see below) is filed, the annexation takes effect.

### Voluntary Annexation

By its name, voluntary annexation is initiated by some or all of the property owners of the territory to be annexed. For annexation without the consent of 100% of the landowners involved, the petition must be signed by 51 percent of the landowners in the area proposed for annexation, or by the owners of 75 percent of the assessed value of the area in the proposed annexation. In the case of voluntary annexation, the municipality must adopt a fiscal plan prior to adoption of the annexation ordinance. Following receipt of the petition, the ordinance is introduced to the City or Town Council. Notice must be published and sent by certified mail to each property owner shown on the Auditor’s current tax list at least 60 days prior to a public hearing. A public hearing must be held at least 60 days after the introduction of the ordinance. The annexation ordinance may be adopted no earlier than 30 days nor more than 60 days following the public hearing. Publication of the adopted ordinance begins a 90 day period during which property owners may file a remonstrance. If no remonstrance is filed, the annexation takes effect. If the municipality fails to adopt an ordinance for voluntary annexation within 150 days after the petition has been filed, the petitioners may file a duplicate copy with the Circuit or Superior Court and the judge may order the annexation to take place if the statutory criteria are met by the petition.

### Super-Voluntary Annexation

Super-voluntary annexation is initiated when 100 percent of the property owners residing in the proposed annexation area file a petition for annexation. After the petition for annexation is filed, an annexation ordinance must be introduced within 30 days of filing. Notice of a public hearing is then published no less than 20 days prior to the hearing. Because 100% of the landowners have consented to the annexation, municipalities are not required to send written notice for a super-voluntary annexation. In the case of super-voluntary annexation, the municipality must adopt a fiscal plan prior to adoption of the annexation ordinance. The annexation ordinance may not be adopted earlier than 14 days following the public hearing, but must be adopted within 60 days of the petition being filed. The ordinance must be published following adoption, but super-voluntary annexations are not subject to remonstrance, and may only be challenged on contiguity. Contiguity may only be challenged for 60 days following publication of the adopted annexation ordinance.

### Municipal View

Municipalities have the right, given by the Indiana General Assembly, to annex territory. Annexation is meant to provide services and improve the overall welfare of the city or town. Often times, adjacent property owners already receive the benefits of living close to the municipality in the form of fire protection, schools, or water and sanitary sewer systems. However, the owners do not pay the municipal taxes that support these services and amenities, though they may pay “user fees” to offset some costs. Additionally, growth outside the municipal boundaries leaves cities without adequate population growth or tax base. Municipalities believe they should maintain this right to annex land under the certain conditions in order to carry out their duties to serve the overall community.

# Annexation

## Property Owner View

Property owners often disapprove of annexation of their land. The officials that desire the annexations were not voted on by the residents. Therefore, property owners do not feel that these elected officials have the right to make decisions that will affect their land such as potential increases in taxes. Property owners have the ability to remonstrate against a proposed annexation. The case could be made, however, that the process currently favors the municipality.

## Annexations Procedures

Essentially, a municipality can annex land based on two criteria that determine whether or not land is considered urban in nature<sup>1</sup>:

1. The area is at least one-eighth (1/8) contiguous; the density of the territory is at least three (3) persons/acre; 60% of the territory is subdivided; or the territory is zoned commercial, industrial, or business.
2. The territory is contiguous, except that at least one-fourth (1/4) rather than one-eighth (1/8) of the boundary must coincide with municipal boundaries; and the land is needed and can be used by the municipality for its development in the reasonably near future.

There are limited circumstances under which non-contiguous land may be annexed. These include:

1. The area to be annexed is occupied by a municipally owned or operated airport or landing field
2. The area to be annexed is occupied by a municipally owned or regulated sanitary landfill, golf course, or hospital (reverts to original jurisdiction if ceases to be municipally owned or regulated for more than one year)
3. The area to be annexed is an industrial park within two (2) miles of the corporate boundary of the municipality (limited applicability)

A fiscal plan must be prepared to ensure that the municipality is able to provide services to the newly annexed land within the timeframes specified by law. The format and structure of the document and the justification methodology to be used is not detailed by statute, but a list of items to be included is given. This list includes<sup>2</sup>:

1. Cost estimates of planned services,
2. Method or methods of financing the services,
3. Plan to organize and extend the services,
4. Commitment that non-capital services including (but not limited to) police and fire protection and street and road maintenance will be provided within one year in a manner equivalent in standard and scope to services provided elsewhere,
5. Commitment that capital services, including (but not limited to) street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided within three years in a manner equivalent in standard and scope to services provided elsewhere, and
6. Plan for hiring employees of other governmental entities whose jobs will be eliminated by the proposed annexation, although the municipality is not required to hire any employees.

Regarding fiscal plans, there are some common oversights that the courts have taken a stand on. A City or Town should be careful to avoid any of these pitfalls in their annexation fiscal plans:

- Failure to assign annexed territories to a council district. *City of Muncie v. Lowe*, 705 N.E. 2d 528 (App. 1999)
- Having the sole reason for the annexation as increasing tax revenues. *Matter of Ordinance Annexing Certain Territory into the City of Fort Wayne*, 642 N.E. 2d 524, 1994 WL 619631 (Ind. App. 1994); *Matter of Annexation Ordinance X-07-91*, 645 N.E. 2d 650, 1995 WL 8949 (Ind. App. 1995); *City of Aurora v. Bryant*, 1960, 240 Ind. 492, 165 N.E. 2d 141
- A fiscal plan that is not sufficiently specific to enable landowners to determine whether services promised have been provided. (*City of Hobart v. Carter*, 644 N.E. 2d 898 (Ind. App. 1994))

<sup>1</sup> Annexation in Indiana: Issues and Options. Center for Urban Policy and the Environment, School of Public and Environmental Affairs. November, 1998. p. ii.

<sup>2</sup> Annexation in Indiana: Issues and Options. p. iv.

# Annexation

## **Annexation Ordinances**

By statute, an annexation ordinance must contain:

- Description of the boundaries of the territory to be annexed (legal description)
- Approximate number of acres of the territory to be annexed
- Assignment of the annexed territory to at least one municipal legislative district except in the case of towns that have abolished legislative districts

For involuntary annexations, it must also include:

- A description of any special terms and conditions adopted
- A description of any tax abatements adopted

## **Remonstrance**

In voluntary and involuntary annexation, property owners in an annexed territory may, within 90 days after publication of the annexation ordinance, remonstrate if 65 percent of the land owners in the annexation area or the owners of 75 percent of the assessed valuation in the annexation area sign a petition. An exception to this rule was added in 2005, making it easier for cities and towns to annex certain areas. If an area is less than 100 parcels and 80 percent of the boundary of the annexation area is contiguous to the municipal boundary, then the remonstrance must be signed by at least 75 percent of the land owners in the annexation area. If the court determines that the remonstrance is valid the court will fix a time for hearing on the remonstrance within 60 days of its filing. In super-voluntary annexations, owners of land within one half mile of the annexation area, as well as property owners in the annexation area, may challenge continuity of the annexed territory to the current municipal boundaries.

To respond, the municipality must have proof that it adopted a fiscal plan by resolution that contains all of the required components of a fiscal plan.

The court can order the annexation not to take place if ALL of the following are true:

- Fire and police protection and street and road maintenance are adequately provided by an entity other than the municipality
- The annexation will have a significant financial impact on the residents or property owners
- The annexation is not in the best interest of the land owners
- The annexation is opposed by 65 percent of the property owners or the owners of more than 75 percent of the assessed value in the annexation area (75 percent of property owners if the annexation is fewer than 100 parcels and has at least 80 percent contiguity).

The court may also consider whether the municipality has extended water and sewer services to the entire annexation area within three years of the date the annexation ordinance was introduced and whether water and sewer services were extended under a contract in lieu of annexation.

The court shall order the annexation to take effect if:

The area to be annexed is contiguous to the municipality and one of the following is true:

- The resident population density is at least 3 persons per acre
- 60 percent of the annexation area is subdivided
- The annexation area is zoned for commercial, business or industrial uses

## Annexation

Or, if the area is contiguous to the municipality by 1/4 (rather than 1/8) of the external aggregate boundary of the municipality, and the area sought for annexation is needed and can be used by the municipality for development in the reasonably near future, the judge may order the annexation to take place.

In either case, the municipality must have adopted a fiscal plan for the annexation and have established a policy for annexation.

### Challenges to Contiguity

Owners of land within one half mile of the annexation area, as well as property owners in the annexation area, may appeal the annexation on the basis of contiguity. In the case of involuntary annexations the challenges must be filed within 60 days of publication of the adopted ordinance. For voluntary annexations, the appeal must be filed no later than 60 days after publication of the adopted ordinance. For super-voluntary annexations, the appeal must be filed within 30 days of publication of the adopted ordinance.

If the court determines that the complaint is sufficient, a hearing will be scheduled within 60 days of the filing of the appeal. If the evidence establishes contiguity, the appeal shall fail.

### Relevant Statutes

- IC 36-4-3-13

### Capacity Recommendations

The community will need staff or consultant services to create annexation fiscal plan and ordinance.

### Guidelines / Considerations for Implementation

- Involuntary annexation is typically a very controversial issue.
- Following the procedural requirements of the statutes is critical to the annexation being upheld in the case of remonstrance.

### Example Ordinances

- **Riverbend Commons Ordinance, City of Muncie:** An annexation ordinance for a small involuntary annexation (see link on list of tools).
- **Geist Annexation Ordinance, Town of Fishers:** An annexation ordinance for a large, controversial involuntary annexation (see link on list of tools).

### Example Studies

- **Shirey Road Annexation Fiscal Plan, City of Muncie:** A fiscal plan for a small involuntary annexation (see link on list of tools).
- **Geist Annexation Fiscal Plan, Town of Fishers:** A fiscal plan for a large, controversial, involuntary annexation (see link on list of tools).

### Helpful References and Links

- **Annexation in Indiana: Issues and Options:** Prepared by the Center for Urban Policy and the Environment, School of Public and Environmental Affairs, this is a good overview of the topic of annexation in Indiana. It includes tax issues, fiscal analyses, different perspectives, critical issues, a brief history of annexation, a bibliography and more. [\[http://iacir.spea.iupui.edu/publications/fullreport.pdf\]](http://iacir.spea.iupui.edu/publications/fullreport.pdf)

# Annexation

## Helpful Contacts

- **American Planning Association Planning Advisory Service:** This service, provided by the American Planning Association, is intended to help communities obtain information about different planning topics and to answer planning questions. Communities may subscribe to the service or seek assistance on an as-needed basis. The service utilizes a vast amount of resources to answer questions and provide information such as sample ordinances, reports, etc.

Contact:

American Planning Association  
Planning Advisory Service  
122 S. Michigan Ave., Suite 1600  
Chicago, IL 60603  
Phone: 312-431-9100  
Fax: 312-431-9985  
[pas@planning.org](mailto:pas@planning.org)

- **Center for Urban Policy and the Environment :** As part of the School of Public and Environmental Affairs at IUPUI, this organization can assist in a variety of planning related matters.

334 N. Senate Avenue,  
Suite 300  
Indianapolis, IN 46204  
Tel: 317-261-3000  
Fax: 317-261-3050  
[urbanctr@iupui.edu](mailto:urbanctr@iupui.edu)  
<http://www.urbancenter.iupui.edu/AboutTheCenter/>

## Other Possible Funding Sources

No other funding sources have been identified for this tool.

## Program Objectives and Issues Addressed

- General Planning
- Growth Management
- Sprawl
- Growth and Development
- No direction for future growth
- Implementation of other plans

## See Also

No other tools have been identified as a reference.